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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BARBARA BRATTON,

Defendant and Appellant.

E070094

(Super.Ct.No. FSB1302276)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed as modified.

Robert F. Somers, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Scott C. Taylor and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Barbara Bratton lost her home located at 925 West Locust in Ontario (Property) to foreclosure and was evicted from the Property. After the foreclosure, she fabricated a correction of grant deed and a warranty deed that transferred the Property back to her. She had the fabricated documents notarized and then filed them at the county recorder's office eight days later. Defendant was convicted of two counts of forgery, two counts of filing a false document and two counts of burglary.

Defendant claims on appeal:

- (1) The admission of the following evidence was more prejudicial than probative: (a) expert testimony to explain language in the correction of grant deed and the warranty deed, which was commonly used by the "Sovereign Citizen Movement"; (b) two deeds in her mother's name, which bore the same language as the correction grant deed and the warranty deed; (c) hearsay testimony regarding the results of a 2015 lawsuit; and (d) the cumulative error of the admission of this evidence mandates reversal of her conviction.
- (2) Defendant's consecutive sentences on the burglary and forgery convictions should be stayed pursuant to Penal Code section 654.
- (3) The trial court abused its discretion by denying her probation.
- (4) The trial court erred by imposing consecutive sentences on all of the convictions.
- (5) The trial court abused its discretion by imposing the middle term on defendant's convictions.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

Defendant was charged in an information filed June 3, 2013, with forgery, specifically, fabricating the correction of grant deed (recorded doc. No. 2013-0151326; hereinafter, the Correction) (Pen. Code, § 470, subd. (d)—count 1); filing the Correction (§ 115, subd. (a)—count 2); forgery, specifically, fabricating the warranty deed (recorded doc. No. #2013-0151327; hereinafter, the Warranty) (§ 470, subd. (d)—count 3); and filing the Warranty (§ 115, subd. (a)—count 4). In counts 5 and 6, she was charged with second-degree burglary for notarizing and filing the Warranty and the Correction (collectively, the Fabricated Documents) at the county recorder's office. As to counts 1 through 6, it was further alleged that the offenses involved a pattern of felony conduct that involved the taking of more than \$150,000. The information was later amended by interlineation to reflect a taking of more than \$100,000. In addition, as to counts 2 and 4, she was charged with the allegation that she damaged or took property exceeding \$200,000.

The jury found defendant guilty of the substantive crimes in counts 1 through 6. They were unable to reach a verdict on the allegations. The People elected not to pursue the allegations and they were dismissed prior to sentencing. Defendant was sentenced to state prison for five years four months.

B. FACTUAL HISTORY

1. *PEOPLE'S CASE-IN-CHIEF*

a. Creation and Filing of the Fabricated Documents

Salvador Guevara, a real estate agent, bought the Property at a foreclosure sale on November 7, 2012. He paid \$231,827.35 for the Property. The debt on the Property was \$504,410.82. The Property was vacant and he began to fix up the Property to sell it. On May 14, 2013, he was at the Property with his wife, when defendant and another woman drove up to the Property and yelled that Guevara had taken the Property from them and they were going to report him to the "Department of Real Estate." Guevara was later contacted by the Department of Real Estate; investigators reviewed all of the documents he had showing he had purchased the Property and no action was taken.

Guevara and his wife went to the Ontario Police Department and lodged a complaint about defendant coming to the Property. Guevara also conducted a search of the documents filed against the Property. He discovered the Correction filed on April 11, 2013. It listed defendant as the owner of the Property. Guevara did not give defendant permission to file the Correction. He also discovered the Warranty, which also had been filed against the Property on April 11, 2013. It provided that defendant was the owner of the Property free and clear of all encumbrances. He did not give her permission to file the Warranty.

In 2012, defendant filed a report with the Ontario Police Department claiming there had been a fraudulent foreclosure on the Property. Former Ontario Police Detective Brian John Hurst advised defendant that it was a civil matter. From the documents he

was given by defendant, he determined there was nothing unusual about the foreclosure. At the end of the conversation, defendant got upset and cursed at him. Defendant filed a complaint with the Ontario Police Department against Detective Hurst for him failing to investigate.

In 2013, Guevara showed Detective Hurst the Fabricated Documents. Guevara was concerned because the documents had been filed with the county recorder and appeared to grant the Property to defendant. Detective Hurst contacted defendant. Defendant admitted to him that she filed the Fabricated Documents. When she came into the police station and was arrested she accused him of setting a trap for her.

Leticia Bautista was a notary public. Her job involved only taking fingerprints and checking identification; she did not verify the validity of documents given to her. She could not identify defendant in court. However, a person with defendant's name came into her office on April 3, 2013, and had Bautista notarize the Fabricated Documents. She took a fingerprint. Bautista wrote down a California driver's license number given to her by the person. A forensic specialist at the Ontario Police Department matched the fingerprint in the notary book to defendant.

A representative from the San Bernardino County Recorder's Office verified that the Fabricated Documents were filed in person at the recorder's office on April 11, 2013. The recorder's office did not verify the legality of documents filed as long as they were in proper form with the proper address. On January 1, 2015, the Property was worth \$245,906; the value of the Property did not drop below \$200,000 between 2009 and 2015.

William Dean Cloud was an attorney who worked for First American Title. He explained that once a foreclosure was complete, the person who had owned the property and who had failed to pay the debt had no further legal interest in the property. Defendant lost any interest in the Property on March 16, 2012. Guevara bought the Property on November 7, 2012, free and clear. The Correction could not transfer the Property from defendant to herself in April 2013 because defendant no longer owned the Property. The Correction was a cloud on the title of the Property. Cloud explained that a warranty deed was a document that affirmed ownership of property. The Warranty filed by defendant could not transfer the ownership of the Property because defendant no longer had any interest in the Property. These were considered false documents. These false documents could impact the ability to sell the Property or get a loan.

In 2015, Guevara won a lawsuit against defendant, involving the Fabricated Documents, for the Property. The court order found that defendant had no interest in the Property, the Fabricated Documents were “void and canceled” and the Property belonged to Guevara.

On June 28, 2012, Ontario Police Corporal Guillermo Rivera was called to the Property. Defendant had called-in a fraud report. When Rivera arrived, she told him that she was the rightful owner and she was being wrongfully evicted. Defendant told him the Property was in foreclosure and she was to be out by July 3, 2012. She admitted to Corporal Rivera she last made a payment in 2009.

Guevara’s wife’s name appeared on the title to the Property in 2009, while defendant still owned the Property. Her name was mistakenly put on the Property when

she and Guevara bought another piece of property and the escrow company recorded the wrong parcel as belonging to Guevara's wife. They legitimately purchased the Property in 2012.

b. The Sovereign Citizen Movement

Detective Hurst explained that in his 29 years with the Ontario Police Department, he had training with respect to the "Sovereign Citizen Movement" (the Movement). The Movement did not accept the law of the land including federal and state law. Detective Hurst stated that there had been officers ambushed and killed by members of the Movement. The Movement started in Georgia in 1793 when the State of Georgia refused to follow a court order, claiming to be a sovereign state. The case involving this claim was cited in the Fabricated Documents. In Detective Hurst's experience, members of the Movement did not pay taxes and did not get driver's licenses.

Joanna Mendelson was a senior investigator researcher and director of special projects for the Anti-Defamation League. Specifically, she focused on monitoring extremist groups. She monitored and tracked extremist-related activity from hate groups to domestic terrorists. She recently focused all of her research and monitoring on the Movement. She tracked social media for those following or in charge of the Movement. She also had contact with law enforcement who had encountered members of the Movement.

Mendelson explained the Movement was the one of the largest domestic terrorist organizations in the United States. Movement members believed that the government was unconstitutional and had no jurisdiction over them. They followed "God's law".

There were hundreds of thousands of followers. Their goal was to “subvert the democratic process.” The Movement was very active on the Internet and provided legal documents that could be downloaded to help with any legal problems a follower may encounter based on their beliefs.

Members of the Movement oftentimes engaged in paper terrorism, which stemmed from the belief that the court system was illegitimate. They oftentimes filed paperwork in the courts to clog the system or used it to delay justice. It was common when a dispute arose with a non-member, to attack the person financially by placing a fake lien on their property. Nearly all of the cases she had seen involved bankruptcy or foreclosure, used by the Movement member to save his or her home.

There were several types of members within the Movement. One type was attracted to the ideology in order to obtain financial relief. They sought help in trying to manipulate the system. Another type was the angry and frustrated people who wanted to be free at all costs. A final type was someone who had knowledge of the Movement and used it to profit off others.

Mendelson examined the Fabricated Documents. The mailing address was indicative of the Movement based on the zip code being in brackets. The deeding from “BARBARA BRATTON” to “Barbara Bratton” was a common way that members wrote names. The use of “[d]omiciled in one of the several States,” was commonly used in place of the United States. She referred to herself as a woman of “flesh and blood” which referred to her sovereign entity. Further, the way that she signed the Fabricated

Documents also was indicative of a member of the Movement. It was common for members to get documents notarized.

In Mendelson's opinion, the Fabricated Documents incorporated language commonly used by Movement members. She could not express an opinion as to whether defendant was a member. She admitted that someone who had a driver's license, registered his or her vehicle or appeared for jury duty was not a fervent member. Someone who was very dedicated would not use a lawyer in court. She acknowledged that anyone could download documents from sovereign citizen websites.

2. *DEFENSE*

Defendant testified she had a valid driver's license. In 1974, her parents bought the Property. Defendant lived in the Property for 40 years until she was removed due to the foreclosure. When her father died, her mother added her and her sister to the Property by grant deed. She and her sister took out money on the house to fix it up. She became the sole owner in 2005. She refinanced in March 2005 to help fund the family business. She insisted she was told she would receive a loan with a fixed rate but when she got her first payment statement it was a much higher rate and was adjustable. She was not allowed to read the terms of the loan prior to signing. She asked to rescind the loan but she had already signed the papers. She initially made payments on the promise the loan would be modified to give her a better rate.

Defendant refinanced again in June 2005. The rate she received was higher and she could not make the monthly payments. She made payments between 2005 and 2007. She was told by a mortgage company that in order to get a modification of her loan, she

had to stop making payments, which she did in 2007. Defendant insisted she worked out a payment plan with the bank and made a payment in October 2007 but received a notice that month she was in default. In April 2008, she found out she had been foreclosed upon; she received a notice of eviction, which she fought. Defendant was told that the lender was dismissing the case and she received a letter from Select Portfolio Servicing (SPS) that she was on a new payment plan. She understood it to be a new loan. Defendant made a payment then asked for a loan modification.

On October 29, 2008, defendant encountered a man outside the Property taking photographs. The man told defendant that the Property was supposed to be vacated. Defendant contacted SPS and was advised her payment on the loan was being rejected. She was sent a letter dated October 28, 2008, that her payment of \$2,600 had been rejected because she was in default and owed more money. Defendant was advised the Property had been purchased and she was going to be evicted. Defendant tried to arrange for a family member to purchase the Property but her efforts were unsuccessful. On February 5, 2009, she received a notice of eviction. She instructed her attorney to file a lawsuit for fraud and she fought the eviction. She lost the eviction proceedings and was ordered to vacate by March 16, 2009.

While she was waiting to vacate, she received information that Guevara's wife owned the Property. She contacted the FBI claiming fraud. Defendant insisted she was given back the keys to the Property by SPS on April 8, 2009, but was not told to make payments. She made no mortgage payments in 2010; she never heard from SPS. In March 2011, she made complaints about SPS to various public agencies. A quiet title

action was started to remove Guevara's wife from the Property deed. She had an ongoing fraud lawsuit against her previous lenders and Guevara's wife in July and August 2009.

In October 2011 defendant received a notice of default from U.S. Bank. She fought the foreclosure but in January or February 2012, she received notice of the trustee's sale. In 2012, she was sued by Guevara; she represented herself in the action. In March 2012, the Property was foreclosed on despite her ongoing cases filed for fraud. In June 2012, U.S. Bank was issued a writ of possession on its unlawful detainer action against her, with a July 2012 eviction date; she appealed.

Defendant claimed her family members were permitted to move back to the Property but they were removed in August 2012. She continued with her lawsuit claiming the foreclosure was fraudulent. She admitted she filed the Fabricated Documents because she had valid information that the foreclosure was fraudulent. Defendant denied she was a sovereign citizen, nor had she attempted to associate with members of the Movement. She had a valid driver's license and registered her car. She filed a complaint against Detective Hurst because she believed he did not properly do his job.

She claimed she got the wording for the Fabricated Documents from a form on the Internet. She thought the wording was pertaining to Christian beliefs and had no idea about the Movement. She filed the Fabricated Documents in order to defend her right to the Property. She did not believe the foreclosure was valid.

Defendant admitted that between 2008 and 2012 she made no payments on the Property and did not pay taxes on the Property. She did not have permission to put the

Property in her name in 2013. She insisted she filed the Fabricated Documents because the foreclosure was fraudulent. Defendant's mother filed similar deeds against a property in Upland at the same time, containing the same language. The property belonged to defendant's mother. Defendant helped her mother download the same documents off the Internet because her mother's foreclosure was also fraudulent. Neither defendant nor her mother were sovereign citizens.

3. *REBUTTAL*

James Wern worked for South Hills Properties and managed properties in foreclosure. He was involved in the foreclosure at the Property. He went to the Property for the eviction July 3, 2012. All the occupants were removed that day and the locks were changed. Wern returned to the Property a few days later and it was occupied again by defendant's sister and mother. Wren found they were able to gain access by removing a sliding glass door. He fixed the door and removed them. Several days later he again returned to the Property to find defendant's mother and sister in the house again. Defendant was also present. Wren called the police and the women all left.

Ontario Police Detective Melissa Ramirez was dispatched to the Property on the morning of August 8, 2012. She met a U.S. Bank attorney at the location, who had an eviction order for the Property. Defendant's sister and mother were in the Property and were angry and upset about leaving. Defendant arrived at the Property and was very angry. The women finally left, near the end of Ramirez's 10-hour shift.

The last payment to SPS was made in March 2008; it was applied to the September 2007 payment. A subsequent payment from defendant was rejected because it

was not enough to bring the loan current. Defendant had contacted SPS advising she was under the impression the foreclosure sale was being rescinded. Defendant also notified SPS that she was suing them for illegal collection on the improper loan.

DISCUSSION

A. ADMISSION OF EVIDENCE

Defendant contends the trial court abused its discretion by admitting evidence of the Movement; two deeds in her mother's name, which used the same language included in the Fabricated Documents; and the hearsay testimony of the result of a 2015 lawsuit involving defendant and Guevara, as this evidence was more prejudicial than probative pursuant to Evidence Code section 352. She further contends that the cumulative error of the admission of this evidence mandates reversal.

1. *STANDARD OF REVIEW*

Only relevant evidence is admissible and should only be admitted if the risk of undue prejudice does not outweigh the probative value. (Evid. Code, §§ 350, 352.) “The trial court has great discretion in determining the admissibility of evidence” (*People v. Williams* (2009) 170 Cal.App.4th 587, 606.) “ ‘ “The ‘prejudice’ referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against defendant as an individual and which has very little effect on the issues.” ’ ” (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119.)

“[T]he decision on whether evidence . . . is relevant, not unduly prejudicial and thus admissible, rests within the discretion of the trial court. [Citation.] ‘Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion

“must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” [Citation.]’ [Citations.] It is appellant’s burden on appeal to establish an abuse of discretion and prejudice.” (*People v. Albarran* (2007) 149 Cal.App.4th 214, 224-225; see also *People v. Gonzalez* (2012) 210 Cal.App.4th 724, 736.)

2. *THE SOVEREIGN CITIZEN MOVEMENT*

a. Additional Factual Background

Defendant filed a motion in limine seeking to exclude evidence of the Movement pursuant to Evidence Code section 352. At the hearing on the motion, defense counsel categorically denied defendant was involved in the Movement. Defense counsel acknowledged that the Fabricated Documents used language commonly used by the Movement but defendant was not involved and did not plan to use membership as a defense. Defense counsel objected to the expert testimony regarding the history of the Movement. Defendant was not claiming that she regained the Property under Movement ideology.

The People contended the language in the Fabricated Documents was language used by the Movement. Further, the average person would not understand the language of the deed of trust and what language should be included in the documents. The language in the Fabricated Documents followed Movement ideology.

The trial court analogized the case to a gang case in which experts were allowed to testify as to the meaning of territories, hand gestures and clothing because otherwise this

evidence would confuse the jurors; an expert could opine as to whether this showed that the defendant was a member of the gang. In this case, the language in the Fabricated Documents was similar. The language in the Fabricated Documents did not have meaning without an expert advising the jurors of the meaning of the language and whether it was indicative of the Movement.

Defendant disagreed with the gang analogy because there was no special allegation in this case regarding the Movement. This testimony was only relevant if defendant was arguing that the Movement allowed her to file the Fabricated Documents, but she did not intend to raise that defense. The Movement had a negative connotation. The People could not raise the issue unless it was a defense. It was “terribly inflammatory.”

The trial court ruled that it agreed with the defense that the evidence could be damaging to defendant, but it was not “unduly damaging or unduly prejudicial under a 352 analysis.” The trial court found the evidence was “highly probative as to the defendant’s motive, intent, and reasons behind her actions.” The jury should be given context to the “bizarre” language in the Fabricated Documents. The trial court also disagreed that only if defendant raised a Movement defense was the evidence relevant. The trial court allowed the prosecution to present evidence of the Movement. Defense counsel further argued that it was not an element of the offense and should be excluded. The prosecutor responded that the People had to prove the Fabricated Documents were false and this language needed to be explained to the jury in order to prove it was false.

After opening argument by the prosecutor, defense counsel again objected to the Movement evidence, contending it was too prejudicial for the jury to hear and painted defendant in a bad light, when she denied membership. The trial court responded that based on the language in the Fabricated Documents, she had adopted Movement ideology and the People could argue she was using their tactics. Defense counsel objected to the prosecutor using the term “paper terrorism” when referring to the tactics used by the Movement. The prosecutor responded that the federal government had labeled the Movement as a domestic terrorist organization. The People’s expert would testify to why it was considered paper terrorism. The trial court overruled the objection by defendant. It ruled defense counsel could argue it was not paper terrorism and that the People were attempting to inflame the jury. The expert testified about the Movement as detailed, *ante*.

b. Analysis

The prosecution had charged defendant with forgery. Section 470 in pertinent part reads: (d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, [any of a list of more than 40 kinds of named documents concerning interests in tangible and intangible property], knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery.” As such, the prosecution had to prove that defendant knew the Fabricated Documents were “false, altered, forged or counterfeited.” They also had to prove that she intended for the documents to be accepted as genuine and that she intended to defraud.

The prosecution used the expert to explain the reason that defendant filed the deeds, in anticipation of defendant claiming she had a right to file the deeds because the foreclosure was fraudulent. The prosecution contended that defendant was using Movement tactics to tie up the Property rather than preserving her own interest because she believed there was fraud. No testimony was introduced that defendant was in fact a member of the Movement.

Moreover, expert testimony is admissible if is “ ‘[r]elated to a subject that is sufficiently beyond common experience [and] would assist the trier of fact.’ ” (*People v. Torres* (1995) 33 Cal.App.4th 37, 45.) As noted by the trial court, as in a gang case where an expert can testify as to the particular meaning of gang signs and paraphernalia, the language in the Fabricated Documents was unusual. The expert testimony was relevant to advise the jurors this was not a normal transfer of Property, and showed the Fabricated Documents were false.

Additionally, the evidence was not unduly damaging or prejudicial. The evidence introduced did not identify defendant as a violent member of the Movement; it only showed her use of tactics to cloud the title of the Property. The trial court did not abuse its discretion by admitting the expert testimony.

3. *ADMISSION OF DEFENDANT’S MOTHER’S DEEDS*

a. Additional Factual Background

Defendant testified she had no knowledge of the Movement and had never tried to be around its members. During cross-examination, the prosecutor asked her about her mother’s name appearing in Bautista’s notary book. Defendant admitted they were

together at the notary at the same time. The prosecutor attempted to introduce exhibits 13 and 14, which were documents obtained during the lunch break. Defense counsel objected on the grounds of discovery. The prosecutor responded the documents were obtained due to defendant's testimony. Exhibit 13 was a correction of grant deed for a property in Upland that contained language similar to the Correction filed by defendant for the Property. The prosecutor accused defendant of "doing the same thing" on this other property and defense counsel objected. A bench conference was held but not reported. The prosecutor was allowed to continue his inquiry. Defendant admitted she and her mother went to the county recorder's office together to file these deeds along with the Fabricated Documents. Defendant stated that her mother filed the same documents because another bank defrauded her mother and took her property.

After the testimony, defense counsel objected on the record pursuant to Evidence Code section 352 that the two deeds signed by defendant's mother should not have been admitted. There was no proof of wrongdoing with those deeds. The prosecutor contended it was admissible to show modus operandi because defendant had testified she had not done anything like the Warranty or Correction before. The notary book showed that these other two deeds were executed at the same time, they were being sent to the same return address and contained the same language. Defendant's name also appeared on her mother's two deeds. The prosecutor argued defendant had "done this before" on her mother's property.

The trial court noted defendant's testimony opened the door to this type of evidence. The evidence contradicted her testimony that she just found the document on

the Internet and did not follow the Movement. Also, the evidence attacked defendant's credibility. The documents became relevant when defendant testified. Further, there were only a few questions asked at the time the documents were introduced; there was not an undue consumption of time.

b. Analysis

“ ‘ “The admission of rebuttal evidence rests largely within the sound discretion of the trial court and will not be disturbed on appeal in the absence of ‘palpable abuse.’ ” ’ ” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1164.) We cannot conclude that the trial court committed “palpable abuse” in admitting the two deeds executed by defendant's mother to attack defendant's credibility. Defendant had testified she was not a sovereign citizen, did not know anything about the Movement, and had never been involved with its members. However, the deeds executed by her mother included that defendant helped her mother record them. The deeds contained Movement language, which was relevant to show defendant in fact was aware of the tactics of the Movement's members. Further, it helped to show defendant's intent was to cloud the title to the Property and not because she had an honest belief that the foreclosure was fraudulent.

Moreover, the probative value was not substantially outweighed by the risk of undue prejudice. Here, the evidence certainly was not more inflammatory than the evidence that defendant herself was involved in filing the Fabricated Documents on the Property, when it was clear that she knew she had no right to the Property. Moreover, as noted by the trial court, there were only a few questions asked of defendant about her mother's deeds and defendant explained she only copied them off the Internet, the same

thing she insisted she did with the Fabricated Documents. The trial court did not abuse its discretion by admitting the two deeds in rebuttal.

4. *LAWUIT BETWEEN DEFENDANT AND GUEVARA*

a. Additional Factual Background

During the People's case-in-chief the People presented the testimony of Cloud, who explained the chain of title on the Property. He testified defendant had lost any interest in the Property on March 16, 2012, and that Guevara bought the Property on November 7, 2012, with no encumbrances. The Fabricated Documents that were filed on April 11, 2013, were a cloud on title and would impact the ability of Guevara to sell the Property.

On cross-examination, defense counsel asked Cloud if he was familiar with the term "lis pendens." Cloud responded that a lis pendens was filed to "provide constructive notice that title or some interest in the property, interest in title, is the subject of a lawsuit." Defense counsel asked Cloud that if, in his research, he had found a lis pendens on the Property. Cloud testified that there was a case filed between Guevara and defendant regarding the Property and Guevara's attorneys had recorded a lis pendens on the property on April 5, 2013, to give constructive notice of the lawsuit.

On redirect, Cloud testified that in 2015, Guevara won a lawsuit against defendant involving the Fabricated Documents; the court found that defendant had no interest in the Property and the Fabricated Documents were void. Defense counsel objected on the ground of hearsay. The trial court overruled the objection finding, "No, he can opine as to whether or not it has any effect on his opinion." Cloud admitted that defendant could

appeal the order and while it was pending, Guevara may not be able to sell the Property. Cloud also testified that the judgment finding the Fabricated Documents void was filed on March 18, 2015.

b. Analysis

“[A]n out-of-court statement can be admitted for the nonhearsay purpose of showing that it imparted certain information to the hearer, and that the hearer, believing such information to be true, acted in conformity with such belief. [Citation.] The nonhearsay purpose must also be relevant to an issue in dispute.” (*People v. Montes* (2014) 58 Cal.4th 809, 863.)

Here, defense counsel opened the door to the admission of the evidence regarding the lawsuit between Guevara and defendant. The trial court appeared to allow such evidence on redirect for the non-hearsay purpose of its impact on Cloud’s opinion regarding the cloud on title. This evidence was relevant as to whether Guevara was harmed and whether there were any damages. Regardless, as discussed *post*, even if the evidence was hearsay, admission of this evidence was harmless.

5. *PREJUDICE*

Defendant contends that cumulative error of the admission of the above evidence warrants reversal. Even if the trial court erred by admitting all or any of the above evidence, any conceivable error was harmless. “The erroneous admission of . . . evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been excluded.” (*People v. Avitia* (2005) 127 Cal.App.4th 185, 194.)

Initially, Movement evidence was not damaging, as the prosecutor made clear during closing argument that he was not claiming or trying to prove defendant was a member. He argued, “You have hardcore sovereign citizens that kill people, mostly law enforcement, and then you have people who just resort to it in financial need, which is the case here.”

Moreover, the admission of the results of the lawsuit between Guevara and defendant was not prejudicial. This occurred after defendant prepared the Fabricated Documents and it had no impact on her intent at the time the documents were filed and prepared. Moreover, the jury was advised that defendant had not been successful in challenging the foreclosure so they were well aware that she had been unsuccessful in claiming a right to the Property.

Finally, without the evidence *ante*, other evidence supporting defendant’s convictions was overwhelming. There was no dispute defendant went to the notary on April 3, 2013, and had the Fabricated Documents notarized. Further, she went to the county recorder and filed both documents on April 11, 2013. Defendant committed these acts despite being well aware that a foreclosure had occurred. The jury could not reasonably conclude that defendant truly believed the foreclosure was fraudulent, as she testified that she had not paid anything on the Property, including taxes and the mortgage, for four years. The evidence that the Fabricated Documents were false was overwhelming.

We have not found any individual errors, and even if there was any conceivable error, such error was harmless. As such, “we do not find reversible error by considering the claims cumulatively.” (*People v. Montes, supra*, 58 Cal.4th at p. 884.)

B. SENTENCING ISSUES

Defendant raises several claims as to her sentence: (1) section 654 mandates that the trial court stay the sentences on counts 1, 3, 5 and 6, the forgery and burglary counts; (2) the trial court erred by denying probation; (3) counts 1, 3, 5 and 6 should have been ordered to run concurrent to count 2; and the trial court erred by imposing the middle term on all counts.

1. *ADDITIONAL FACTUAL BACKGROUND*

In count 1, defendant was convicted of the forgery of the Correction and in count 2, defendant was convicted of filing the Correction at the county recorder’s office. In count 3, she was convicted of forgery of the Warranty and in count 4 she was convicted of filing the Warranty at the county’s recorder’s office. The burglary in count 5 was based upon entering the county recorder’s office with the intent to commit a felony and count 6 was based on entering the notary office with the intent to commit a felony. Defendant admits that both forgeries in counts 1 and 3 were committed on April 3, 2013, when she had the Fabricated Documents notarized.

Defense counsel filed a sentencing memorandum. Defense counsel argued that the trial court should impose a probationary sentence, arguing defendant had no prior criminal record, the offenses were nonviolent, and there was no evidence of financial benefit. She was a productive member of society and had strong familial support. The

nine factors in California Rules of Court, Rule 4.414 (a) weighed in favor of probation. Defense counsel extensively analyzed the factors. Defendant did not commit forgery by copying another person's name or information. She only sought to get back her family home. Moreover, the burglaries only involved entering the county recorder's office to file the Fabricated Documents. No weapon was used and the victim was not particularly vulnerable. There was no evidence she inflicted physical or emotional injury. There was not a high degree of monetary loss as there was nothing to show any impact from the two deeds. The jury was unable to reach a verdict on the monetary allegations. There was no criminal sophistication and she admitted her involvement. He also argued that probation should be granted with no jail time, relying on California Rules of Court, rule 4.414 (b). Numerous character letters were attached.

The People filed a sentencing memorandum arguing that each count of forgery and filing a fake document must be separately punished. Further, section 115, subdivision (c)(2) provided that probation should be granted only in unusual cases where the interests of justice were best served. The People relied on several aggravating factors including that defendant induced others to participate in the crime; the crimes involved a substantial amount of planning and sophistication; and they involved an attempt to take a great amount of money. The People recommended that count 2 be the principal offense and that the remaining counts be sentenced consecutive to count 2.

Defense counsel filed a response. Defense counsel argued that section 654 applied. Defendant had only one objective: protect her interests in the Property. Both deeds were filed on the same day, at the same time and at the same location. Further, the

forgery and burglary charges could not be sentenced separately. Even if section 654 did not apply, concurrent terms should be imposed pursuant to California Rules of Court, Rule 4.425(a). All the activity occurred on the same day and pursuant to a single objective. Further, defendant was subject to probation even with the language in section 115, subdivision (c) because there was no proof of monetary loss, as required by the statute.

The probation officer recommended that defendant receive three months supervised probation with 285 days in county jail. This was due to her not being a danger to society and it being her first offense. The probation officer noted in aggravation pursuant to California Rules of Court, rule 4.421, that the crime as carried out required planning and sophistication. There were no other factors. In mitigation (Cal. Rules of Court, Rule 4.423) was defendant having no prior record. It further noted under California Rules of Court Rule 4.425 as to consecutive sentencing, that (1) the crimes were not predominately independent of each other; (2) they did not involve separate acts of violence; and (3) the crimes were committed so closely in time and place as to indicated a single period of abhorrent behavior.

At the time of sentencing, defense counsel referred the trial court to the probation report, which stated she was not a danger to society. Further, defendant had family support. Defense counsel argued that under section 115, subdivision (c)(2), probation could be granted. The prosecutor was concerned about the report because there was no indication that the victim was interviewed. Further, under section 115, subdivision (b), if multiple instruments were filed, each was a separate violation. As for section 654, there

were two separate instruments. Further, no specific loss had to be proven for the section 115 convictions to be imposed. He argued that until the deeds were cleared off the title, Guevara could not sell the Property; no permanent damage need be shown.

The trial court indicated it had read defense counsel's sentencing memorandum, the People's response, and the probation report. The trial court was relying upon its memory of the trial and not the facts set forth in the probation report. The trial court felt the actions by defendant took place "over a long, protracted period of time" against different agencies. It was the trial court's belief that defendant would not comply with any lawful order. The trial court based its belief that she would not follow legal orders, because "[s]he has quite demonstrated throughout the course of this hearing that she just simply cannot or will not. . . . I have no confidence she would be a good candidate for probation."

Probation was denied and a state prison sentence was imposed. For count 2, the principal term, defendant was sentenced to the middle term of two years. For counts 1, 3, 4, 5 and 6, the trial court found "these are independent and separate crimes pursuant to a section 654 analysis" and defendant was sentenced to one-third the midterm of eight months on each count and they were all to run consecutive to count 2 and each other. She received a total sentence in state prison of five years four months.

2. *SECTION 654*

Defendant contends her sentences on counts 1, 3, 5 and 6, the forgery and burglary counts, should have been stayed as they were indivisible conduct underlying the section 115, subdivision (a) convictions. All of defendant's conduct was an indivisible course of

conduct, to record the Fabricated Documents, to preserve an interest in her home. The People concede that both burglary convictions should have been stayed. The People also concede one of the forgery convictions must be stayed but contends one should have been imposed and was not subject to section 654.

Section 654, subdivision (a) provides “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.” “ ‘Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ ” (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

“The defendant’s intent and objective present factual questions for the trial court, and its findings will be upheld if supported by substantial evidence. [Citation.] ‘We review the court’s determination of [a defendant’s] “separate intents” for sufficient evidence in a light most favorable to the judgment, and presume in support of the court’s conclusion the existence of every fact the trier of fact could reasonably deduce from the evidence.’ ” (*People v. Andra* (2007) 156 Cal.App.4th 638, 640-641 (*Andra*).)

There is no doubt the trial court properly determined that both section 115, subdivision (a) convictions were not subject to section 654. Section 115 provides “Every

person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.” Section 115, subdivision (d) provides that “For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.” “This language demonstrates an express legislative intent to exclude section 115 from the penalty limitations of section 654. Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be part of a continuous course of conduct and have the same objective.” (*People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1800.) Hence, counts 2 and 4, the filing of the Fabricated Documents, were not subject to section 654.

The People concede that counts 5 and 6, the burglaries, should have been stayed by the trial court because they were incidental to the forgery and filing of false documents. We need not address the issue based on the concession and will order the burglary convictions in counts 5 and 6 stayed.

As for the forgery convictions, the People argue that the forgery committed at the notary’s office on April 3, 2013, was not subject to section 654 because it was committed on a separate date from the filing of the false documents. The People contend the jury concluded the forgery of both the Fabricated Documents were completed on April 3, 2013, and it was not until eight days later that she filed the deeds. The People insist that even though defendant’s crimes may have been directed to the objective of taking the

Property, the time gap between the forgery crimes and filing the false instruments supports the trial court's conclusion that one of the forgeries was not subject to section 654. The People concede defendant can only be sentenced on one of the forgeries.

“ ‘Under section 654, “a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]” [Citations.] This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.’ ” (*Andra, supra*, 156 Cal.App.4th at p. 640.)

In *Andra*, the defendant obtained a credit card using another person's name. Two weeks later, she rented a car using the credit card and never returned the car. She was convicted of identity theft and vehicle theft. The appellate court concluded that the two offenses could be punished separately because “[t]he weeks between the commission of these crimes afforded defendant ample opportunity to reflect and then renew her intent before committing the next crime.” (*Andra, supra*, 156 Cal.App.4th at pp. 640-641.)

The same reasoning is supported by the evidence in this case. Defendant had to prepare the Fabricated Documents and then enter the notary's office to have them notarized. She then waited over one week to file the Fabricated Documents, which gave her time to reflect on whether she wanted to cloud the title of Guevara. She had the opportunity to reflect and to renew her intent prior to committing the additional crimes. (*Andra, supra*, 156 Cal.App.4th at p. 640.)

As such, the trial court properly determined that one of the forgeries was not subject to section 654. The People concede that the second forgery was subject to section 654 because they were incidental to each other and there is not a similar provision in section 470, subdivision (d) as in section 115, which provides for separate punishment. As such, the trial court should have stayed the sentences in counts 3, 5 and 6 and we will order the trial court to modify defendant's sentence.

3. *DENIAL OF PROBATION*

Defendant contends the trial court abused its discretion by denying her probation.

The trial court has broad discretion in matters involving probation and sentencing, and the party challenging a decision to grant or deny probation bears the burden of establishing the court abused its discretion. (*People v. Catalan* (2014) 228 Cal.App.4th 173, 179.) “ ‘In reviewing [a trial court’s determination whether to grant or deny probation,] it is not our function to substitute our judgment for that of the trial court. Our function is to determine whether the trial court’s order . . . is arbitrary or capricious or exceeds the bounds of reason considering all the facts and circumstances.’ ” (*People v. Weaver* (2007) 149 Cal.App.4th 1301, 1311, disapproved on another ground in *People v. Cook* (2015) 60 Cal.4th 922.)

Here, the trial court indicated it had read defendant’s sentencing memorandum, the People’s response and the probation report. It was well aware of the mitigating and aggravating factors as both parties set forth the factors in detail. Further, the trial court stated that the actions by defendant took place “over a long, protracted period of time.” The trial court did not trust that defendant would follow the trial court’s order imposing

probation. It stated, “I really have no reason to believe that at this point in time and at this point in her life [defendant] would comply with any lawful order of any judicial officer or any other person of legal authority. She has quite demonstrated throughout the course of this hearing that she just simply cannot or will not [and] I have no confidence she would be a good candidate for probation.” California Rules of Court, rule 4.414(b)(3) provides that one reason for denying probation is the “[w]illingness to comply with the terms of probation.” Here, the trial court was in the best position to determine whether defendant was capable of complying with probationary terms.

Defendant contends she showed she could comply with court orders since she was out on bail during the trial and consistently appeared at trial. However, the evidence clearly established she and her family continued to enter the Property after the foreclosures. The trial court could reasonably conclude she would not follow the terms of her probation and such determination was not irrational or arbitrary.

Defendant argues she should have been granted probation because all the parties, except for the trial court, considered probation to be the appropriate sentence. Prior to trial she was offered a deal for probation by the prosecution, which was approved by the trial court. The probation officer recommended probation. However, the grant or denial of probation is a decision within the sole discretion of the trial court. (*People v. Catalan*, *supra*, 228 Cal.App.4th at p. 179.) After hearing the evidence and observing defendant in court, the trial court could reasonably conclude that probation was not appropriate in this case.

Defendant cites several factors in mitigation: that she had no prior record, she had the support of the community, prison would be difficult for her, she was a productive member of society, and the nature of her crimes favored probation. “The trial court was not required to state reasons for rejecting a factor in mitigation.” (*People v. Downey* (2000) 82 Cal.App.4th 899, 919.) As stated, the evidence supported the trial court’s determination that defendant would not follow her probationary terms. Further, the trial court stated it had reviewed the probation report and defendant’s sentencing memorandum. “Because the trial court expressly stated on the record that it received and considered . . . those documents, we presume the court did, in fact, consider those circumstances even though it did not expressly restate, recite, or otherwise refer to each one.” (*People v. Weaver, supra*, 149 Cal.App.4th at pp. 1317-1318.) The trial court did not abuse its discretion by denying probation.

4. *CONCURRENT RATHER THAN CONSECUTIVE SENTENCES*

Defendant argues that if we disagree she should have been placed on probation, and disagree that counts 1, 3, 5 and 6 were all subject to section 654, the trial court erred by running these counts consecutive to count 2, rather than imposing concurrent sentences. We need only address whether consecutive sentences on counts 1, 2 and 4 were properly imposed.

California Rules of Court, rule 4.425(a) provides the following factors to be considered in imposing consecutive sentences rather than concurrent sentences: “(1) The crimes and their objectives were predominantly independent of each other; [¶] (2) The crime involved separate acts of violence or threats of violence; or [¶] (3) The crimes were

committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.” Rule 4.425(b) provides that aggravating and mitigating factors may be considered in deciding whether to impose consecutive sentences except “(1) A fact used to impose the upper term; [¶] (2) A fact used to otherwise enhance the defendant’s sentence in prison or county jail under section 1170 (h); and [¶] (3) A fact that is an element of the crime may not be used to impose consecutive sentences.”

In the probation report, the probation officer stated that the crimes were not committed at different times and places. However, as stated, defendant went to the notary on April 3, 2013, and had the Fabricated Documents notarized. Eight days later, she went to the county recorder and filed the Fabricated Documents impacting, the title on the Property. Further, section 115, subdivision (d) provides “For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.” (See also *People v. Gangemi, supra*, 13 Cal.App.4th at p. 1800.) The trial court did not abuse its discretion by imposing consecutive sentences on the forgery—occurring eight days prior to the other crimes—and the two section 115 convictions based on the language in section 115, subdivision (d).

5. IMPOSITION OF MIDDLE TERM

Finally, Defendant contends the trial court erred by imposing the middle term on her offenses.

A trial court must provide reasons for its selection of the upper, middle, or lower term. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847; § 1170, subd. (b).) “The trial court’s sentencing discretion must be exercised in a manner that is not arbitrary and capricious, that is consistent with the letter and spirit of the law, and that is based upon an ‘individualized consideration of the offense, the offender, and the public interest.’ ” (*Sandoval*, at p. 847.) “Even if a trial court has stated both proper and improper reasons for a sentence choice, ‘a reviewing court will set aside the sentence only if it is reasonably probable that the trial court would have chosen a lesser sentence had it known that some of its reasons were improper.’ ” (*People v. Jones* (2009) 178 Cal.App.4th 853, 861.)

Here, prior to the imposition of sentence, the trial court stated that it had reviewed the sentencing memorandums filed by defendant and the prosecution, which listed the aggravating and mitigating factors. Further, it had reviewed the probation report listing the factors. It found the crimes committed by defendant were committed over a long period of time. This implied it was relying upon the finding in the probation report that the crimes were committed in a manner that indicated planning and sophistication. Even one factor in aggravation can justify imposition of the upper term, and certainly the middle term. (See *People v. Osband* (1996) 13 Cal.4th 622, 728.)

Moreover, even if we accept defendant’s claim that the trial court did not consider all of the aggravating and mitigating factors in reaching its decision, it is not reasonably probable that the court would have imposed a lesser sentence. The probation report listed that the crimes involved were committed in a manner that indicated planning and

sophistication. The trial court found that defendant refused to follow court orders. The trial court properly imposed the middle term on count 2.

DISPOSITION

The sentences on counts 3, 5 and 6 are stayed pursuant to section 654. The trial court is directed to amend the abstract of judgment so as to reflect this modification and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. (§§ 1213, 1216.) In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER

Acting P. J.

We concur:

CODRINGTON

J.

SLOUGH

J.